

CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH

OA No.290/00371/2012

Pronounced on : 05.03.2020
(Reserved on : 19.02.2020)

CORAM: HON'BLE SMT. HINA P. SHAH, MEMBER (J)
HON'BLE SMT. ARCHANA NIGAM, MEMBER (A)

Manoj Kumar Saini son of Sh. Shankar Lal Saini, aged 36 years, at present working on the post of LDC, at Jawahar Navodaya Vidyalaya, Pallu, District Hanumangarh (Raj.)

...APPLICANT

BY ADVOCATE : Mr. Dinesh Ojha.

VERSUS

1. Union of India through the Secretary, Department of School Education & Literacy, Ministry of Human Resource Development, Government of India, Shastri Bhawan, New Delhi.
2. The Navodaya Vidyalaya Samiti through its Commissioner, A-28, Kailash Colony, New Delhi.
3. The Joint Commissioner (Personnel), Navodaya Vidyalaya Samiti, A-28, Kailash Colony, New Delhi.
4. The Deputy Commissioner, Navodaya Vidyalaya Samiti, Regional Office, 160, Zone-II, MP Nagar, Bhopal (MP).
5. The Deputy Commissioner, Navodaya Vidyalaya Samiti, Regional Office, 18, Sangram Colony, Mahaveer Marg, C-Scheme, Jaipur.
6. The Principal, Jawahar Navodaya Vidyalaya, Rampura-Neemuch (MP).

RESPONDENTS

BY ADVOCATE: Mr. Avinash Acharya, for R1 to R6

ORDER

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Per Smt. Archana Nigam, Member (A):-

1. The present Original Application (O.A.) has been filed by the applicant under Section 19 of the Administrative Tribunals Act, 1985, wherein the applicant is seeking the following reliefs:

"8(1).It is, therefore, humbly prayed that this Hon'ble Tribunal may kindly be pleased to accept and allow the present original application and the impugned order dated 17.06.2005 (Annexure A1) issued by the respondent no.4, up to the extent through which it provides for regularization of services of the applicant on the post of LDC with prospective effect instead of retrospective effect be declared void and consequently the same may kindly be directed to be modified providing regularization of the services of the applicant on the post of LDC with retrospective effect viz. the date of initial appointment of the applicant on the post of LDC (on contractual basis);

8(2) The seniority list (Annexure A2) issued by the respondent no.4, whereby the applicant has been placed in seniority deeming his date of joining as 02.07.2005 may kindly be ordered to be modified to the affect that the applicant may be placed in seniority deeming his date of joining as 21.11.2001;

8(3) The respondents may further be directed to pay the consequential benefits after making the aforesaid modification, on an interest @18% per annum on the arrears due;

8(4) Any other appropriate order or direction, which this Hon'ble Tribunal deems fit, just and proper may kindly be passed in favour of the applicant.

8(5) Cost of the OA may kindly be awarded in favour of the applicant."

2. The facts of the present case as narrated by the applicant are that the applicant is presently working as Lower Division Clerk (LDC) under Navodaya Vidyalaya Samiti (NVS) and he is posted at Jawahar Navodaya Vidyalaya (JNV), Pallu, District Hanumangarh (Raj) under respondent no.5. Initially in the year 2000, a vacancy for Other Backward Classes (OBC) was notified by respondent no.6 on to the post

of LDC on regular basis in the pay scale of Rs.3050-75-3950-80-4590. A list of candidates including the applicant, who belongs to OBC category was provided by the Employment Exchange to respondent no.6. A call letter dated 21.11.2000 (Annexure A3) was issued by respondent no.6 to the applicant for interview to be conducted on 10.12.2000. The applicant did well in each test and the interview, and therefore, he was selected for the post by the Vidyalaya Appointment Committee (VAC) after being found meritorious. A proposal for appointment of the applicant was sent by respondent no.6 for its approval. The aforesaid proposal seeking approval to the post of LDC was rejected by the Selection Committee i.e. respondent no.4 on the ground of defective evaluation criteria vide order dated 20.04.2001 (Annexure A4). Again a call letter dated 03.05.2001 (Annexure A5) was issued by respondent no.6 to the applicant with regard to the afresh selection process to be conducted on 15.05.2001. Again a proposal recommending the name of the applicant for appointment on the post was again sent by respondent no.6 for approval vide dated 19.05.2001.

3. It is further stated that the proposal for appointment of the applicant was pending before the respondent no.4 vide letter dated 09.07.2001 (Annexure A6) was issued by respondent no.4 and served to respondent no.6. It was intimated that all recruitments for which the process had already been started at Vidyalaya level or was pending at Regional Office for want of approval or otherwise shall also be made/filled up on contractual basis. Therefore, according to this office order there was a ban imposed by the NVS headquarter on regular appointments for the post of LDC at that relevant time till further orders. Vide letter dated 19.05.2001 for appointment of the applicant

on the post of LDC was accorded on contract basis instead of regular basis on consolidated wage of Rs.3000/- per month. In pursuance of the order dated 15.10.2001, the respondent no.6 issued an offer of appointment dated 31.10.2001 (Annexure A8) to the applicant for appointment on contract basis. Further an order dated 28.09.2002 (Annexure A10) was issued by respondent no.4 served to the respondent no.6 for continuation/creation of the posts of teaching and non-teaching staff for the Jawahar Navodaya Vidyalaya, Neemuch during the academic year 2002-03. Vide an order dated 21.11.2002 (Annexure A11) issued by respondent no.3, a ban was imposed on recruitment of non-teaching staff at Vidyalaya level with immediate effect till further orders. Thereafter, an office letter dated 06.06.2003 issued by respondent no.4 to the Principals of the region, that the ban on regular recruitment for the post of LDC was withheld by the NVS Hqrs. Vide order dated 07.05.2003.

4. It is further added that vide an order dated 17.06.2005 (Annexure A1) issued by respondent no.4, the approval for regularization of services of the applicant for the post of LDC was accorded but with prospective effect instead of retrospective effect viz date of initial appointment. The respondent no.6 was directed to issue appointment order immediately in favour of the applicant with prospective effect. In pursuance of the order dated 17.06.2005, the respondent no.6 issued an appointment order dated 29.06.2005 (Annexure A19) in favour of the applicant. The applicant was transferred from the JNV Neemuch (MP) to JNV, Pallu District Hanumangarh (Raj.) vide an order dated 01.06.2007 (Annexure A20). The respondent no.4 has issued a final seniority list dated 07.07.2011 (Annexure A2) of the non-teaching staff in respect of LDC/Store-Keeper, Mess Helper, Chowkidar and

Chowkidar-cum-Sweeper, who are on the roll of NVS, Bhopal Region as on 31.12.2010. The name of the applicant finds its place at Sr.No.198 in the said seniority list. A bare perusal of the seniority list makes it clear that a number of persons have been provided appointment between the period of June 2001 to May 2005 and moreover some persons have been provided appointment in between the alleged ban period viz June 2001 to May 2003 and further the actual ban period i.e. between 21.11.2002 to 07.05.2003. In this case, the applicant has been a victim of circumstances created by the respondents which has caused a severe injustice towards the applicant. The applicant was offered appointment on contract basis on 31.10.2001 and he joined his duties on 21.11.2001 under a selection process on regular basis and therefore the services of the applicant should have been regularized since his initial appointment with retrospective effect instead of prospective effect.

5. Aggrieved by the order dated 17.06.2005 (Annexure A1) upto the extent through which it provides 'Regularization of services of the applicant with Prospective effect instead of Retrospective effect' and being aggrieved by the seniority list dated 07.07.2011 (Annexure A2) issued accordingly deeming the date of joining of the applicant as 02.07.2005 instead of 21.11.2001, the applicant has got no other alternative remedy but to approach this Tribunal by way of filing the present OA. Hence the OA.

6. In the written statement filed on behalf of the respondents, it has been stated that the selection process to fill up the regular vacancy of one post of LDC was held at JNV, Neemuch, during the year 2001. After the selection, the completed proposal was sent to the NVS, RO,

Bhopal for scrutiny/approval of the appointing authority i.e. Dy. Commissioner, RO, Bhopal. The completed proposal dated 19.05.2001 was, in fact, received at NVS, RO, Bhopal on 25.05.2001. The communication dated 13.06.2001 (Annexure R1) further stated that all recruitments, for which the recruitment process has already been started at the Vidyalaya level or pending at NVS, RO, Bhopal for want of approval, shall also be made on contractual basis. In compliance of directions issued by the Hqrs, NVS, New Delhi vide letter dated 13.06.2001 (Annexure R1), the RO, Bhopal, accorded approval for appointment of the applicant Manoj Kumar Saini, whose name had been empanelled in the merit list and recommended for appointment by the Selection Committee at Vidyalaya level, on contractual basis vide NVS, RO, Bhopal vide letter dated 15.10.2001 (Annexure A7). Accordingly, in pursuance of instructions issued vide letter dated 05.02.2002 (Annexure A9), Vidyalayas, having vacancies of Non-Teaching posts vi., that of LDC, Driver and Store-Keeper, initiated action/process to fill up such vacancies on regular basis and about 07 to 08 such vacancies were filled up on regular basis under direct recruitment.

7. It is further stated that again the Headquarters NVS, New Delhi banned recruitment of Non-Teaching Staff at the Vidyalaya level on regular basis on some administrative reasons till further orders vide letter dated 21.11.2002 (Annexure A11). Subsequently, the ban imposed for filling up the vacancies on regular basis, was given up and comprehensive instructions, to be followed for selection to these posts, were communicated by the Hqrs vide order dated 07.05.2003 (Annexure R2). Thereafter, the NVS called for the details of the employees, whose cases were initially processed for selection on regular basis but subsequently were appointed on contractual basis as per the

policy decision, referred above, taken by the NVS during the year 2001, under which the case of the applicant was also considered for appointment on contractual basis. The applicant was, in fact, allowed to continue on contractual basis till 01.07.2005. In the meantime, on the representation submitted by the applicant for regularization, the case of the applicant was re-examined and decided for regularization with prospective effect as per the guidelines from the Hqrs, NVS, New Delhi. Hence the case of the applicant was considered for regular appointment with prospective effect and therefore, the applicant was offered regular appointment on direct recruitment basis as LDC in the pay scale of Rs.3050-75-4590 vide letter dated 29.06.2005 (Annexure A19) and the services of the applicant has been considered regularized w.e.f. 02.07.2005 i.e. from the date of joining duties on regular basis.

8. It is also further stated that the seniority of the applicant has been reckoned/fixed at the appropriate place in the seniority list/the cadre of LDC of NVS, Bhopal Region w.e.f. 02.07.2005 i.e. from his date of joining duties on regular basis. The seniority list has been duly circulated vide office letter dated 05.02.2007 (Annexure R3), to all the concerned employees including the applicant, while the applicant was still working at Jawahar Navodaya Vidyalaya, Neemuch. The applicant was relieved from NVS, Neemuch on 03.06.2007, upon his inter-regional transfer to Jawahar Navodaya Vidyalaya, under NVS, Jaipur Region vide his transfer order dated 21.05.2007 (Annexure R4) issued by NVS New Delhi. As per the **policy of NVS, LDC being a regional cadre post and once the employee is transferred outside the Region on inter-regional transfer on own request basis, he will lose his seniority and he will be placed at the bottom of the seniority list in the cadre of the new region to which he reports**

for duty. Once the applicant availed the Own Request Transfer from JNV, Neemuch, Bhopal to JNV, Hanumangarh, he automatically lost the seniority, he held in the cadre of LDC of Bhopal Region as he will be entitled for placement at the bottom of the seniority list of the cadre of LDCs of NVS, Jaipur Region. As such, the applicant shall have no claim for benefit of seniority, whatsoever, upon availing request transfer from the post he held in Bhopal Region.

9. No rejoinder has been filed on behalf of the applicant in the present case.

10. Arguments advanced by the learned counsel for the parties were heard and the documents placed by them on the record perused carefully.

11. It may be mentioned at the outset that no rejoinder has been filed by the applicant in this OA which was filed in 2012.

12. It is the case of the applicant that Annexure A1 dated 17.06.2005 issued by respondent no.4 requires to be modified to the effect that the services of the applicant will be treated as regularized with retrospective effect from his date of initial appointment on the post of LDC (on contractual basis) instead of on prospective basis. Consequential relief sought by the applicant is that his seniority may be modified deeming his date of joining as 21.11.2001.

13. Per contra, the respondents have stated in their arguments during final Hearing and as submitted in their Reply also, that such a retrospective regularization and assignment of seniority is not warranted for the following reasons:-

- i) The selection process was conducted at the Vidyalaya level, strictly as per the guidelines/procedure prescribed by the Navodaya Vidyalaya Samiti. After the selection, the completed proposal was sent to the NVS, Regional Office, Bhopal, for scrutiny by /approval of the Appointing Authority i.e. Deputy Commissioner, Regional Office, Bhopal.
- ii) The completed proposal dated 19.05.2001 was, in fact, received at Navodaya Vidyalaya Samiti, RO, Bhopal on 25.05.2001. However, while the matter was under scrutiny/process at RO level, the RO, Bhopal received a communication from the Headquarters, Jawahar Navodaya Vidyalaya Samiti, New Delhi, vide its letter dated 13.06.2001, wherein it was instructed that in view of certain references for clarification received from ROs at Headquarters, regarding appointment against Non-teaching posts, **it has been decided, with the approval of the Director, NVS, to the effect that, henceforth, posts other than Office Superintendent,, UDC, Catering Assistant and Staff Nurse in the JNV, shall be filled up on contractual basis only.**
- iii) The communication dated 13.06.2001 (Annexure R1) further stated that all recruitments, for which the recruitment process **has already been started at the Vidyalaya level or pending at NVS, RO, Bhopal, for want of approval or otherwise, shall also be made/filled up on contractual basis.**

14. Subsequent to this, the respondent department vide their letter dated 17.06.2005 approved the regularization of services of the applicant on the basis of the guidelines of NVS Headquarters dated 29.03.2004 and on the basis of the recommendations of the Scrutiny Committee. The case of the applicant after such re-examination was regularized with prospective effect in terms of the guidelines quoted above.

15. As regards seniority, respondents have submitted that the seniority of the employees appointed on direct recruitment basis, in the cadre is to be reckoned with effect from their date of joining in the cadre on regular basis. The seniority of the applicant has been reckoned/fixed at the appropriate place in the seniority list/the cadre of LDC of NVS, Bhopal, RO w.e.f. 02.07.2005 i.e. from his date of joining

duties on regular basis. The seniority list has been duly circulated vide office letter dated 05.02.2007 (Annexure R3), to all the concerned employees including the applicant, while the applicant was still working at JNV, Neemuch; Upon his inter-regional transfer to Jaipur Region vide transfer order dated 21.05.2007 and as per the policy of NVS his seniority was re-fixed at the bottom of seniority list of the cadre to which he reported subsequent to his 'own request transfer'.

16. It is the case of the respondents that the orders have been issued by Authority competent to do so and the entire case has been dealt with in terms of the rules in the matter as well as the guidelines of the NVS Headquarters.

17. These orders have been issued in 2007 but have not been challenged before this OA which was preferred in 2012. Moreover, in the absence of any rejoinder, nor substantial arguments to controvert the submissions made by the respondents, we are of the opinion that no interference is warranted in the action taken by the respondent department. The OA lacks merit and deserves to be dismissed. It is accordingly dismissed. There shall be no order as to costs.

(ARCHANA NIGAM)
MEMBER (A)

(HINA P. SHAH)
MEMBER (J)

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